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## STUDENTS FORUM

### European Court of Human Rights

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#### 1. Introduction

The European Convention on Human Rights signed within the Council of Europe in 1950 entered into force in 1953. The Convention is the first legally binding instrument regulating a whole catalogue of fundamental rights and freedoms. In addition to laying down a catalogue of mainly civil and political rights, the Convention set up a monitoring mechanism – the European Court. This is considered as one of the most effective international mechanism at present.

Despite the fact that initially there was a two-tier system of the protection of human rights under the European Convention (the European Commission and European Court of Human Rights), following the adoption of the Protocol 11 to the Convention in 1998, foreseeing the reform of the supervisory system of Convention, the new, permanent European Court of Human Rights now functions.

The necessity of the reform of the supervision system was conditioned by the increasing number of applications lodged before the supervisory bodies of the Convention from 1980 causing delays in legal proceedings and creating an actual threat of paralysis.

#### 2. Organisation of the Court

An application submitted to the Court is initially received by the Registry which registers it and examines the conformance of the application form. After the registration the application is assigned to one of the sections.

Under the Rules of the Court, the full Court is divided into four Sections, fixed for three years. The sections are presided over by their chairmen. The chairmen of two sections are the Deputy Chairmen of the Court at the same time. Each section represents the organisational structure and its purpose is, upon the submission of the case from Committee, to set up the chamber of seven judges that will consider the case and take the relevant decision.

The Committee is an important body of the Court. Each Committee is composed of three judges and performs the duties assigned to it for a period of 12 months. The major task of the Committee is to decide whether the application submitted to its section satisfies the

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admissibility criteria. If the committee settles an issue positively, it prepares a conclusion and forwards it to the Chamber together with the case. Otherwise, the application is declared inadmissible.

The examination of an application on merits is the privilege of the Chambers composed of seven judges. Each Chamber is constituted within the relevant section and is headed by the chairman of this section. The Chamber includes the judge elected in respect of the state concerned. If the latter is unable to participate, the relevant state is represented by the person chosen by him, who is called an *ad hoc* judge. The Chamber is authorised to consider on the merits the application of any state, private person, group of private persons and non-governmental organisation. The judgment of the Chamber shall be final if:

- The parties to a case refuse to refer the case to the Grand Chamber;
- Within three months from the adoption of the decision, the parties did not request an appeal;
- The panel of the Grand Chamber did not satisfy the claim of the parties on the relinquishment of the case in favour of the Grand Chamber.

As for the Grand Chamber, it is the highest instance. It is composed of seventeen judges with a three-year term of office. The Grand Chamber, in addition to the *ex officio* members – the President and Vice-president of the Court and the Presidents of Sections, is composed of other judges elected on the basis of the Rules of the Court.

The Grand Chamber considers cases when any Chamber relinquishes jurisdiction in favour of the Grand Chamber. This takes place if, during the proceedings, one of the Chambers faces a question of interpretation of the Convention or if its decision is inconsistent with the current practice.

### 3. Status of Judges

The number of judges of the European Court of Human Rights is equal to the number of the states parties to the Convention. Today this number is 45. Each state is represented by one judge. However, this does not mean that they represent the interests of their states in the Court. Each judge is obliged to perform his/her official duties independently and impartially.

As it is stated in Article 21 of the European Convention, judges shall be of a high moral character and must either possess the qualification required for appointment to high judicial office or be jurisconsults of recognised competence.

According to Article 22 of the Convention, judges of the European Court are elected by the Parliamentary Assembly from a list of three candidates nominated by the High Contracting Party. As a rule, the candidate judge is the citizen of the country in question; however it is permissible for the candidate nominated by the state to be from the other state party of the Convention.

If the nomination of the judges is completely the prerogative of a state, the Parliamentary Assembly of the Council of Europe decides itself whether the candidate meets the given requirements or not. The Parliamentary Assembly elects one of the candidates by a majority of votes. In other words, to be elected as a judge, the candidate has to obtain more than a half of the votes of the Assembly.

The term of office of the judges is essential as well. According to Article 23 of the Convention, the term of office of judges is defined for a period of six years with the right to be re-elected. At the same time, on the first elections at the Court, in 1998 - the term of office of one-half of the judges expired in three years. This provided for the renewal of the further-half of the judges every three years. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term. The terms of office of judges shall expire when they reach the age of 70.

Article 21 of the Convention concerns the status of judges. Judges are not allowed to engage in any activity which is incompatible with their independence, impartiality or with the demands of full-time office.

Guarantees for the independence and impartiality of judges are foreseen under the Convention itself. For example, a judge is not able to participate in the consideration of the case if he/she is one way or another interested in its results, or he/she is in any respect related to the given case during its consideration on the national level.

#### **4. Jurisdiction of the Court**

The European Convention distinguishes two categories of applications: inter-state and individual. As regards inter-state applications, it has to be mentioned that applicants can only be the states parties to the Convention and the subject of the dispute may cover the violation of only those human rights and freedoms that are foreseen under the Convention and its Protocols.

With respect to inter-state cases, the principle of collective performance of human rights has to be taken into the consideration. The state is entitled to submit the application to the Court not only in case of the violation of the rights of its own citizens, but in case if it considers that the responding state violates the European Convention of Human Rights. An application brought by Denmark, France, Norway, Sweden and the Netherlands against Turkey in the nineteen eighties is an example.

Despite the significant importance of inter-state cases, their number is much less than those of individual applications. The latter constitutes the main part of the cases.

Not only an individual, but also a group of individuals and non-governmental organisations are entitled to lodge an application before the Court. It is reasonable to examine them.

An individual belongs to the first category. This category covers any person under the jurisdiction of the states parties to the Convention, whether he/she is the citizen of the mentioned state or not, a free person or a person under arrest, sane or insane. Sometimes

an applicant happens to be underage, as the full age is not a compulsory requirement for the applicant. The mandatory requirement is the violation of the applicant's right.

The group of individuals belongs to a second category. As a rule, here we deal with the case drawn up on the basis of the similar facts as for example the application submitted by parents on the violation of their children's right for the free choice of education. When the complaint is submitted by a group of individuals, each individual of the group should satisfy the requirements of Article 34 of the Convention.

The third category covers non-governmental organisations, such as: trade unions, companies, co-operatives and other legal persons. The application should cover the violation of the rights of these organisations by a state or its bodies and not of the right of any member of these organisations separately.

In addition to the consideration of individual and inter-state applications, the Court may give an advisory opinion that may be requested only by the Committee of Ministers. Advisory opinions can be given only by the Grand Chamber and only on legal questions concerning the interpretation of the Convention and its Protocols. The Grand Chamber adopts such a decision by a majority of votes. At the same time, any judge has the right to present his separate opinion together with the decision. The latter concerns not only advisory opinions, but any other decisions adopted by the Court.

#### **5. Admissibility Criteria**

The admissibility criteria are defined under paragraph 3 of Article 35 of the Convention. Paragraph 4 of this Article foresees the right of the Court to reject any application which it considers inadmissible under this Article, at any stage of proceedings. Paragraph 1 of the Article states:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken”.

The first paragraph of this Article requires from the applicant to exhaust all domestic legal remedies available for him/her, including administrative and judicial remedies, for which the complainant is entitled under the legislation of the state in question. In case the state asserts that the applicant has not exhausted all domestic remedies, it has the burden of proof to the Court upon the effectiveness of those remedies.

As regards the six months requirement, this period starts from the date on which the final decision was taken i.e. the date when the applicant learned the judgment taken by the final instance.

Paragraphs 1 and 4 of the Article cover both inter-state and individual applications, whereas other paragraphs concern only individual applications. According to paragraph 2 of Article 35:

“The Court shall not deal with any application submitted under Article 34 that:

- a) is anonymous, or
- b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information”.

The first requirement states that the application should not be anonymous. In other words, it should include relevant information concerning the applicant and has to be signed. Otherwise, the Court will not be able to contact the applicant and declares his/her application inadmissible. Paragraph b) states the principle according to which the same matter should not be examined twice.

Paragraph 3 of the Article foresees that the Court shall declare inadmissible any individual application, submitted under Article 34, which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or if the applicant abuses the right of application.

Inadmissibility criteria are applied when the object of the application is considered not to be in the competence of the Court. According to this paragraph, the second basis for inadmissibility is that the application is “manifestly ill-founded” which means that the application does not convey any data confirming the infringement of the provisions of the Convention. As regards the third condition of the mentioned paragraph - “the abuse of the right of application” is applied mainly in cases when the applicant did not reply to a number of Court requirements regarding the consideration of his/her case or if defamatory statements of the applicant against the responding state are made.

## **6. Legal Proceedings**

Both inter-state and individual applications may be submitted to the Court. The legal proceedings of both of them are similar. Each application, upon registration, is assigned to one of the Sections of the Court, whose chairman designates a judge rapporteur from that Section. After preliminary examination the judge rapporteur decides the issue on its further consideration. As a rule, the application is referred to the Committee of three judges to decide the issue of admissibility. The decision of the Committee is adopted by consensus and is final. However, in certain cases the judge rapporteur may refer the case directly to the Chamber of seven judges. It is entitled to deal with the issue on admissibility of the case as well as further proceedings on the adoption of the final decision. The application is referred to the Chamber also in the case when Committee judges could not reach a consensus regarding the application’s admissibility as in the case when the application includes an inter-state dispute and, of course, if the Committee has declared it admissible.

The hearing on merits of the application submitted to the Court is the prerogative of the Chambers of seven judges. The respondent state is included in the further stage of the case proceedings. It is notified on the claim that is raised against it and is given an

opportunity to express its opinion. At the same time parties are obliged to present additional evidence and written explanations. A friendly settlement of the dispute is directly related to this stage of the proceedings. The Court gives an opportunity to the parties for the settlement of the matter by means of negotiation. Moreover, it serves as a mediator of the negotiations (Article 38 of the Convention). If a friendly settlement is effected, the Court shall strike the case from the list and confine itself to a brief statement of the facts and of the solution reached.

The Rules of the Court foresee the examination of the case in written and in oral form. While the oral hearing, that seldom takes place, the parties shall appear before the Court in person. The Court proceedings are headed by the Chairman of the relevant Chamber. Final Decision is adopted by majority votes of judges.

The official languages of the Court are English and French. However, a party may, with permission, use the official language of its own state. In this case it is responsible to translate all statements and oral presentations in English or French.

The final judgment is taken by the Chamber upon the majority of votes. A judge may attach his/her dissenting opinion to the judgment.

As regards the character of the Court judgments, it has to be mentioned that, according to Article 46 of the Convention the high contracting parties undertake to abide to the final judgments of the Court. The European Court may impose pecuniary compensation for material or moral damage. The Court is quite cautious when defining the material or moral damage. Hence the principle of "just satisfaction" foreseen under Article 41 may frequently be limited to an establishment of a fact of violation. The latter may be sufficient for the compensation of moral damage under the statement of the Court.

The Committee of Ministers of the Council of Europe performs the supervision on the execution of judgments of the European Court. As a rule, the Committee of Ministers transmits a judgment of the Court to the representative of the respondent state in the Council of Europe and points out the state's obligation to present the information on a timely execution of the judgment. If the Court judgment is executed, the Committee adopts a relevant resolution and considers the case. Otherwise, the Committee returns the case and performs the monitoring procedures.

In conclusion, it can be mentioned that the major objective of the European Court is the effective protection of human rights. The considerable number of applications submitted to the Court remains an essential problem. This will probably lead to reform soon.